

Before the  
Federal Communications Commission  
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	File No. EB-09-SE-028
Nevada Sun Peak LP	)	NAL/Acct. No. 201032100008
Las Vegas, Nevada	)	FRN # 0007642846

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: December 30, 2009**

**Released: January 4, 2010**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Notice of Liability for Forfeiture* (“NAL”), we find Nevada Sun Peak LP (“Nevada Sun Peak”), former licensee of Private Land Mobile Radio (“PLMRS”) station WPQE205, in Las Vegas, Nevada, apparently liable for a forfeiture in the amount of six thousand four hundred dollars (\$6,400) for apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“Act”)<sup>1</sup> and Section 1.903(a) of the Commission’s Rules (“Rules”)<sup>2</sup> and for apparent willful violation of Section 1.949(a) of the Rules.<sup>3</sup> The noted apparent violations involve Nevada Sun Peak’s operation of its PLMRS station without Commission authority and its failure to timely file a renewal application for the station.

**II. BACKGROUND**

2. On June 7, 2000, Nevada Sun Peak was granted a license to operate station WPQE205 until the license expiration date of June 7, 2005. On August 13, 2005, the Commission’s Wireless Telecommunications Bureau (“WTB”) cancelled the license for WPQE205 since there was no record that Nevada Sun Peak had filed a renewal application for the station. On January 30, 2009, Nevada Sun Peak filed with WTB a request for Special Temporary Authority (“STA”), stating that its license for WPQE205 had “lapsed,” and the STA was necessary for continued operation of its radio facility pending the filing of an application for a new license.<sup>4</sup>

3. Because it appeared that Nevada Sun Peak may have operated WPQE205 after the expiration of its license, WTB referred the matter to the Enforcement Bureau for investigation and possible enforcement action. On March 12, 2009, the Enforcement Bureau’s Spectrum Enforcement Division issued a letter of inquiry (“LOI”)<sup>5</sup> to Nevada Sun Peak.

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<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> 47 C.F.R. § 1.903(a).

<sup>3</sup> 47 C.F.R. § 1.949(a).

<sup>4</sup> See File No. 0003722013 granting Nevada Sun Peak an STA on February 2, 2009, under the call sign WQJX364. The grant of the STA does not preclude or prejudice any enforcement action related to unauthorized operations.

<sup>5</sup> See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Mr. Robert W. Graben, Nevada Sun Peak LP (March 12, 2009).

4. In its April 10, 2009 response to the LOI,<sup>6</sup> Nevada Sun Peak stated that it inquired with the FCC about the status of its license for WPQE205 in late 2008, learned of its expiration and filed an STA on January 30, 2009.<sup>7</sup> Nevada Sun Peak explained that on October 26, 2004, prior to the expiration of its station's license, its previous site manager initiated the renewal process, enlisted the services of Business Radio Licensing, and paid the company to file the renewal application for WPQE205.<sup>8</sup> Nevada Sun Peak maintains that until the 2008 inquiry by its current site manager, it "did not have any reason to believe that the renewal application was not completed" or that its license "was otherwise not in good standing."<sup>9</sup> Upon discovering the expiration of its license, Nevada Sun Peak stated that it promptly took corrective action to comply with FCC regulations.<sup>10</sup> Nevada Peak admitted that it utilized station WPQE205, intermittently, approximately 10-12 times annually,<sup>11</sup> during the years between the expiration of its license for WPQE205 and prior to filing its January 30, 2009 STA, but stated that the exact dates and times of its intermittent use were not readily available.<sup>12</sup>

### III. DISCUSSION

5. Section 301 of the Act and Section 1.903(a) of the Rules prohibit the use or operation of any apparatus for the transmission of energy or communications or signals by radio except under, and in accordance with, a Commission granted authorization.<sup>13</sup> Additionally, Section 1.949(a) of the Rules requires that licensees file renewal applications for wireless radio stations, "no later than the expiration date of the authorization for which renewal is sought, and no sooner than 90 days prior to expiration."<sup>14</sup> Absent a timely filed renewal application, a wireless radio station license automatically terminates.<sup>15</sup>

6. As a Commission licensee, Nevada Sun Peak was required to maintain its authorization in order to operate station WPQE205. Nevada Sun Peak admitted that it operated its PLMRS station intermittently without Commission authority from the initial license expiration date.<sup>16</sup> By operating station WPQE205 from the license expiration date of June 7, 2005, until the filing of its STA request on January 30, 2009, Nevada Sun Peak apparently violated Section 301 of the Act and Section 1.903(a) of the Rules. Nevada Sun Peak also acted in apparent violation of Section 1.949(a) of the Rules by failing to timely file a renewal application for station WPQE205.

7. Section 503(b) of the Act<sup>17</sup> and Section 1.80(a) of the Rules<sup>18</sup> provide that any person

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<sup>6</sup> See Letter from Robert Graben, Site Manager, Nevada Sun Peak Limited Partnership, to Marlene H. Dortch, Secretary, Federal Communications Commission (April 10, 2009) ("Response").

<sup>7</sup> *Id.* at 1-2.

<sup>8</sup> *Id.* at 2 and Exhibits A-E.

<sup>9</sup> *Id.* at 2.

<sup>10</sup> *Id.* at 3.

<sup>11</sup> *Id.* at 1. See also Affidavit of Robert Graben.

<sup>12</sup> *Id.* at 2.

<sup>13</sup> 47 U.S.C. § 301; 47 C.F.R. § 1.903(a).

<sup>14</sup> 47 C.F.R. § 1.949(a).

<sup>15</sup> 47 C.F.R. § 1.955(a)(1).

<sup>16</sup> Response at 2.

<sup>17</sup> 47 U.S.C. § 503(b).

<sup>18</sup> 47 C.F.R. § 1.80(a).

who willfully or repeatedly fails to comply with the provisions of the Act or the Rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Act, the term “willful” means that the violator knew that it was taking the action in question, irrespective of any intent to violate the Commission’s Rules, and “repeated” means more than once.<sup>19</sup> Based on the record before us, it appears that Nevada Sun Peak’s violation of Section 301 of the Act and Section 1.903(a) of the Rules is willful and repeated, and its violation of Section 1.949(a) of the Rules is willful.

8. In determining the appropriate forfeiture amount, Section 503(b)(2)(E) of the Act directs us to consider factors, such as “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”<sup>20</sup>

9. Section 503(b)(6) of the Act<sup>21</sup> bars the Commission from proposing a forfeiture for violations that occurred more than a year prior to the issuance of an *NAL*. Section 503(b)(6) does not, however, bar the Commission from assessing whether Nevada Sun Peak’s conduct prior to that time period apparently violated the provisions of the Act and Rules and from considering such conduct in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory period.<sup>22</sup> Thus, while we may consider the fact that Nevada Sun Peak’s conduct has continued over a period that began in 2005, the forfeiture amount we propose herein relates only to Nevada Sun Peak’s apparent violations that have occurred within the past year.

10. Section 1.80(b) of the Rules sets a base forfeiture amount of \$10,000 for operation of a station without Commission authority and a base forfeiture amount of \$3,000 for failure to file required forms or information.<sup>23</sup> The Commission has held that a licensee’s continued operations without authorization and its failure to timely file a renewal application constitute separate violations of the Act and the Rules and warrant the assessment of separate forfeitures.<sup>24</sup> Accordingly, we herein propose separate forfeiture amounts for Nevada Sun Peak’s separate violations.

11. We propose a forfeiture in the amount of \$5,000 for Nevada Sun Peak’s continued operation of station WPQE205 after the expiration of its license on June 7, 2005. In proposing a \$5,000

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<sup>19</sup> See 47 U.S.C. § 312(f)(1) & (2). See also *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (the definitions of willful and repeated contained in the Act apply to violations for which forfeitures are assessed under Section 503(b) of the Act).

<sup>20</sup> 47 U.S.C. § 503(b)(2)(E). See also 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures; *Forfeiture Policy Statement*, Report and Order, 12 FCC Rcd 17087, 17110 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

<sup>21</sup> 47 U.S.C. § 503(b)(6).

<sup>22</sup> See 47 U.S.C. § 503(b)(2)(D), 47 C.F.R. § 1.80(b)(4); see also *Behringer USA, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 1820, 1825 (2006), *forfeiture ordered*, 22 FCC Rcd. 1051 (2007) (forfeiture paid); *Globcom, Inc. d/b/a Globcom Global Communications*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 19893, 19903 (2003), *forfeiture ordered*, 21 FCC Rcd 4710 (2006); *Roadrunner Transportation, Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-71 (2000); *Cate Communications Corp.*, Memorandum Opinion and Order, 60 RR 2d 1386, 1388 (1986); *Eastern Broadcasting Corp.*, Memorandum Opinion and Order, 10 FCC 2d 37 (1967), *recon. den.*, 11 FCC 2d 193 (1967); *Bureau D’Electronique Appliquee, Inc.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 3445, 3447-48 (Enf. Bur., Spectrum Enf. Div., 2005), *forfeiture ordered*, 20 FCC Rcd 17893 (Enf. Bur., Spectrum Enf. Div., 2005) (forfeiture paid).

<sup>23</sup> 47 C.F.R. § 1.80(b).

<sup>24</sup> See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 7433, 7438 (2004) (“*Discussion Radio*”).

forfeiture for the station's unauthorized operations, we recognize that the Commission considers a licensee who operates a station with an expired license in better stead than a pirate broadcaster who lacks prior authority, and thus downwardly adjust the \$10,000 base forfeiture amount accordingly.<sup>25</sup> Consistent with precedent,<sup>26</sup> the proposed \$5,000 forfeiture takes into account that Nevada Sun Peak's unauthorized operations occurred for more than three years. In addition, we propose the full base forfeiture amount of \$3,000 for Nevada Sun Peak's failure to file the renewal application for its PLMRS station within the time period specified in Section 1.949(a) of the Rules.<sup>27</sup> Thus, we propose an aggregate forfeiture of \$8,000 (\$5,000 for unauthorized operation of a PLMRS station and \$3,000 for failure to timely file a renewal application).

12. We decline to adjust the forfeiture amount based upon Nevada Sun Peak's argument that it believed Business Radio Licensing acted on its behalf to renew the license for station WPQE205 before its expiration. We also are not persuaded by the documents that the licensee provided in support of its claim. As a Commission licensee, Nevada Sun Peak is responsible for knowing and complying with the terms of its authorization, the Act and the Rules. Moreover, the Commission "has long held that licensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors, and has consistently refused to excuse licensees from forfeiture penalties where actions of employees or independent contractors have resulted in violations."<sup>28</sup> We find, however, that a downward adjustment from \$8,000 to \$6,400 is warranted since Nevada Sun Peak made voluntary disclosures to Commission staff and undertook corrective measures after learning of its violations, but *prior* to any Commission inquiry or initiation of enforcement action.<sup>29</sup>

#### IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act<sup>30</sup> and

<sup>25</sup> See *Discussion Radio*, 19 FCC Rcd at 7438.

<sup>26</sup> See *Richmond Association d/b/a Hilltop Shopping Center*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 51, 53 (Enf. Bur., Spectrum Enf. Div., 2008) ("Richmond") (forfeiture paid) (proposing \$5,000 forfeiture for unauthorized operation of an Industrial/Business Pool Radio Service station for approximately two and one-half years); *Yellow Cab Leasing Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 12719, 12722 (Enf. Bur., Spectrum Enf. Div., 2007) (proposing \$5,000 forfeiture for unauthorized operation of a PLMRS station for over three years); *Five Star Parking d/b/a Five Star Taxi Dispatch*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 18857, 18860 (Enf. Bur., Spectrum Enf. Div., 2007) (forfeiture paid) (proposing \$5,000 forfeiture for unauthorized operation of a PLMRS station for approximately two and one-half years).

<sup>27</sup> See e.g., *Texas Soaring Association, Inc.*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 7638, 7641 (Enf. Bur., Spectrum Enf. Div., 2009); *Discovery World Television, Inc.*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 2883 (Enf. Bur., Spectrum Enf. Div., 2009); *Bloomsburg University of Pennsylvania*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 9357, 9359 (Media Bur., Audio Div., 2008); *Sunflower Communications, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 7657, 7659 (Media Bur., Audio Div., 2008); *Santa Cruz Educational Broadcasting Foundation*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC 21033, 21035 (Media Bur., Audio Div., 2007) (all proposing the full base forfeiture amount of \$3,000 against broadcast station licensees for failure to file timely renewal applications).

<sup>28</sup> See *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-64 (2002).

<sup>29</sup> See *Petracom of Texarkana, LLC*, Forfeiture Order, 19 FCC Rcd 8096, 8097-8098 (Enf. Bur. 2004). See also, *SES Americom, Inc.*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 2694, 2697 (Enf. Bur., Spectrum Enforcement Div., 2009) (forfeiture paid); *Side By Side, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 898, 901 (Enf. Bur., Spectrum Enf. Div., 2008); *Lazer Broadcasting Corp.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 8710, 8712 (Enf. Bur., Spectrum Enf. Div., 2005) (forfeiture paid).

<sup>30</sup> 47 U.S.C. § 503(b).

Sections 0.111, 0.311 and 1.80 of the Rules,<sup>31</sup> Nevada Sun Peak LP **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of six thousand four hundred dollars (\$6,400) for the willful and repeated violation of Section 301 of the Act and Section 1.903(a) of the Rules and the willful violation of Section 1.949(a) of the Rules.

14. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,<sup>32</sup> within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Nevada Sun Peak LP **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

15. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Nevada Sun Peak LP will also send electronic notification on the date said payment is made to Karen.Mercer@fcc.gov and JoAnn.Lucanik@fcc.gov.

16. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

17. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

18. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by first class mail and certified mail return receipt requested to Mr. Robert W. Graben, Site Manager, Nevada Sun Peak LP, 6360 Vegas Valley Drive, Las Vegas, Nevada 89142.

#### FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot  
Chief, Spectrum Enforcement Division  
Enforcement Bureau

<sup>31</sup> 47 C.F.R. §§ 0.111, 0.311 and 1.80.

<sup>32</sup> 47 C.F.R. § 1.80.